# CASE NEG – Legitimacy

## 1

#### The United States Department of Education ought to initiate a process o negotiated rule making with public colleges and universities over whether public colleges and universities ought not restrict any constitutionally protected speech and implement the results of the negotiation.

#### Department of education regulatory negotiation creates better rules.

Hillstock 14 Laurie G, faculty member and administrator in higher education for over 15years.  Most of her experiences have been in the distance learning arena, focusing on strategic planning (i.e., organizational structure, policy, accreditation, and funding models), faculty and curriculum development, marketing, and student success. She has also taught a number of credit bearing courses in the online, hybrid, and web-enhanced learning environment. Dr. Hillstock currently serves as a mentor for the SLOAN C Certificate program as well as a content developer and workshop facilitator for other SLOAN C workshops, including the Online Leadership series. Dr. Hillstock holds a Ph.D. in Educational Leadership (Higher Education) and M.A. in Human Resource Development from Clemson University. She also holds a B.A. in English (minor: Computer Science) from Converse College. “What is Negotiated Rulemaking and How Does It Work Anyway?” June 07, 2014. https://onlinelearningconsortium.org/negotiated-rulemaking-work-anyway/ SA-IB

A few weeks ago, the U.S. Department of Education (the Department) rulemaking panel met to discuss a number of items, but did not reach final consensus regarding state authorization for colleges that operate distance-education programs within other states. As a result, any new, proposed regulations will be left to the discretion of the Department. This indecision has raised awareness and left some wondering what negotiated rulemaking really is and how it works. So, here is a quick rundown…. Let’s start first with a definition. Negotiated rulemaking (a.k.a. regulatory negotiation or reg-neg) is a process where an organization or agency develops a proposed rule. A number of agencies have used and been quite successful with reg-neg, including the Federal Aviation Administration, Occupational Safety and Health Administration, and Environmental Protection Agency. With negotiated rulemaking, typically a committee is formed consisting of members representing the various groups that the proposed regulation itself may affect. An impartial facilitator is also identified. The general public may observe during meetings and usually at the end of each meeting, the committee offers an opportunity for public comment. Printed resources are available online on the appropriate agencies website. The negotiated rulemaking process itself may be defined as a consensus-based process, as the ultimate goal is for the members of the committee to reach consensus regarding the proposed rule. The beauty of such a process is that stakeholders have a chance to try to reach agreement about the proposed rule before a final rule is formed. In addition, when successful, reg-neg can lead to better rules for everyone involved. Now, let’s look at how this relates to distance education… As per the Office of the Federal Register (OFR), in May 2012 the U.S. Department of Education announced the intent to form a negotiated rulemaking committee to consider proposed regulations that would help prevent fraud and ensure appropriate use of Title IV Federal Student Aid program funds, especially within the “context of current technologies”. More specifically, the proposed regulations were to address the use of debit cards to distribute such funds. Later, in April 2013, several topics were added for consideration of the negotiated rulemaking committee, including items related to state authorization for programs offered through distance education. Requests for nominations took place in the Fall 2013 and by Feb 2014, the negotiated rulemaking panel was formed. Marshall Hill (Executive Director of NC-SARA) and Russ Poulin (Interim Co-Executive Director for WCET) represent the field of distance education. Though negotiating committees usually meet for three sessions, this particular committee met on four occasions, once per month from Feb 214 to May 2014.

#### It competes –

#### 1. Plan happens immediately, reg-neg takes 6 months

#### 2. Reg-neg has a chance of not resulting in the plan

#### Federal action is key to solvency – avoids circumvention.

Winkler 09 Adam, professor of Law at UCLA. “Free Speech Federalism” Michigan Law Review, vol 108, no 2. November 2009. SA-IB

The identity of the governmental institution behind a law restricting free speech rights may nonetheless be a significant, if hidden, factor in free speech cases. In this Article, I report the results of an empirical study of free speech decisions in the federal courts and reveal the ways in which the level of government behind a speech law - federal, state, or local - affects the degree of constitutional protection. This study shows that speech restrictions adopted by the federal government are far more likely to be upheld than speech restrictions adopted by other levels of government. Between 1990 and 2003, federal speech restrictions were upheld in 56% of federal court rulings, while only 24% of state speech restrictions were upheld. Even more striking is the fate of speech restrictions adopted by local governments; these were invalidated in almost every case, with only 3% surviving judicial review. In short, the level of government is a very good predictor of whether a speech restriction is likely to be upheld by the federal courts. This Article details these findings and considers potential explanations for, and implica- tions of, this "free speech federalism.”

#### The plan is circumvented without the counterplan.

Hardiman 15 Kate, professor at the University of Notre Dam. “Welcome to college – now be quiet!” The College Fix. August 2015. https://www.thecollegefix.com/post/23862/

A majority of universities across the nation continue to infringe upon their students’ First Amendment right to free speech, according to a 2015 survey of campus policies published by the Foundation for Individual Rights in Education. Once bastions of free expression and open debate, modern American universities prohibit speech in a variety of ways to protect students from ideas some deem “offensive,” “harmful” or “upsetting.” According to the foundation’s report, “Spotlight on Speech Codes 2015: The State of Free Speech on Our Nation’s Campuses,” nearly 55 percent of the 437 universities analyzed have “policies that clearly and substantially prohibit protected speech,” earning the group’s “Red Light” designation. FIRE conducts a yearly free speech review of the nation’s universities to assess their adherence to the First Amendment, and this year’s stats showed nominal improvement over previous ones. “Last year, that figure stood at 58.6 percent; this is the seventh year in a row that the percentage of schools maintaining such policies has declined,” the group noted. But don’t pop the champagne cork just yet. The foundation’s president, Greg Lukianoff, co-penned a cover story for The Atlantic this month which warns the tide has turned so far that now some students want protection from other students’ and professors’ “scary ideas.” “A movement is arising, undirected and driven largely by students, to scrub campuses clean of words, ideas, and subjects that might cause discomfort or give offense,” he wrote. “This new climate is slowly being institutionalized, and is affecting what can be said in the classroom, even as a basis for discussion.” **While the percentage of** higher education institutions with **restrictive speech codes appears to have declined** over the past six years, FIRE reports that **many speech codes may** simply **have been rebranded as “anti-harassment policies” following pressure from the Department of Education**’s Office for Civil Rights. **Universities even hold faculty training sessions to familiarize them with new anti-harassment policies**, such as the University of California’s microaggression training seminars for faculty leaders. In these sessions, professors were taught that saying “America is the land of opportunity” is an offensive “microaggression.”

#### Reg-neg increases legitimacy in rule-making.

Freeman et al 2k Jody Freeman, Professor of Law, University of California, Los Angeles. Laura Langbein, Professor, School of Public Affairs, American University. “REGULATORY NEGOTIATION AND THE LEGITIMACY BENEFIT” Harvard Law Review. Volume: Vol. 9, Issue 1. Year: 2000. http://www.law.harvard.edu/faculty/freeman/legitimacy%20benefit.pdf SA-IB

In our view, empirical studies of negotiated rulemaking that examine cost, time, and litigation rates tell only part of the story and, we believe, not the most important part. The studies summarized here go beyond these limited measures of success and provide a more textured picture of regulatory negotiation. Along virtually every important qualitative dimension, all participants in this study—whether business, environmental, or government—reacted more favorably to their experience with negotiated rules than do participants in conventional rulemak ing.10 Contrary to the critics’ expectations, Kerwin and Langbein found that negotiation of rules reduced conflict between the regulator and regulated entities, and it was no less fair to regulated entities than conventional rulemaking.11 The data contradict claims that regulatory negotiation abrogates an agency’s responsibility to implement laws written by Congress;12 indeed, the process may better enable the agency to fulfill that role. Regulatory negotiation clearly emerges, moreover, as a superior process for generating information, facilitating learning, and building trust.13 Most significantly, consensus-based negotiation increases legitimacy, defined as the acceptability of the regulation to those involved in its development.14 This legitimacy benefit, which was observed independently of the types of rules chosen for conventional versus negotiated rulemaking, and independently of differences among the participants, including their affiliation,15 is no small accomplishment and we argue that, in any event, it is more important than reducing transaction costs.

#### The counterplan bolsters inclusivity of many voices.

Freeman et al 2k Jody Freeman, Professor of Law, University of California, Los Angeles. Laura Langbein, Professor, School of Public Affairs, American University. “REGULATORY NEGOTIATION AND THE LEGITIMACY BENEFIT” Harvard Law Review. Volume: Vol. 9, Issue 1. Year: 2000. http://www.law.harvard.edu/faculty/freeman/legitimacy%20benefit.pdf SA-IB

2. Reg Neg is Broadly Inclusive The data call into question the validity of the criticism that reg negs involve only highly organized and well-financed interests.97 The majority of respondents reported participation by all parties, including small, seemingly ad hoc citizen groups, small businesses, and local government representatives.98 These types of participants were not in the majority, but neither were they rare. The data therefore support the proposition that negotiated rulemaking is at least open to groups that complain about exclusion from other governmental processes, even if those groups are imperfect surrogates for “ordinary citizens.” When asked whether all the interests that should have been involved in the negotiated rulemaking were involved, 65% of respondents answered that there was full representation.99 The literature on reg neg also identifies as a potential problem EPA’s unwillingness to commit, up front, to accept the results of negotiations and use them as the basis for the rule. There is no evidence, however, that this factor affected parties’ decisions to participate. In fact, no respondent expressed concerns in this regard.100

#### Theory arguments about what type of positions the neg can read that have an implication of drop the debater must be in the 1AC –

a) substantive education – they can always read theory on my strat so having their interps in the aff means I can put together a 1NC that we can actually debate

b) bidirectional interps mean that taking a stance before the 1NC is the only fair option – I can’t predict what I have to do to prevent their 1AR theory.

## 2

#### Most campuses restrict guns on campus right now.

AC 16 Armed Campuses. “Guns on Campus’ Laws for Public Colleges and Universities” 2016. <http://www.armedcampuses.org>

The overwhelming majority of the 4,400 colleges and universities in the United States prohibit the carrying of firearms on their campuses. These gun-free policies have helped to make our post-secondary education institutions some of the safest places in the country. For example, a 2001 U.S. Department of Education study found that the overall homicide rate at post-secondary education institutions was 0.07 per 100,000 students in 1999.1 By comparison, the criminal homicide rate in the United States as a whole was 5.7 per 100,000 persons overall in 1999, and 14.1 per 100,000 for persons ages 17 to 29. A Department of Justice study found that 93% of violent crimes that victimize college students occur off campus.2

#### Guns are protected as symbolic speech.

Blanchfield 14 Patrick ~Freelance Writer; PhD in Comparative Literature, Emory University~. "What do Guns Say?" The New York Times. 04 May 2014. https://opinionator.blogs.nytimes.com/2014/05/04/what-do-guns-say/.

Bunkerville is simply the next step in a trend that has been ramping up for some time. Since the election of Barack Obama, guns have appeared in the public square in a way unprecedented since the turbulent 1960s and ’70s — carried alongside signs and on their own since before the Tea Party elections, in a growing phenomenon of “open carry” rallies organized by groups like the Modern American Revolution and OpenCarry.org, and in the efforts by gun rights activists to carry assault weapons into the Capitol buildings in New Mexico and Texas (links to video). According to open carry advocates, their presence in public space represents more than just an expression of their Second Amendment rights, it’s a statement, an “educational,” communicative act — in short, an exercise of their First Amendment freedom of speech. (See this, from the group Ohio Carry, and this Michigan lawsuit.) This claim bears serious consideration. The First Amendment has historically been much harder to limit than the Second, and so extending the freedom of speech to the open display of weapons raises several urgent questions about how we understand the relationship between expressing ideas and making threats, between what furthers dialogue and what ends it. But are guns speech? Is carrying a weapon as an act of public protest constitutionally protected under the First Amendment? And if so, what do guns say? The courts have traditionally recognized “symbolic speech” — actions that convey a clear message — as deserving of First Amendment protection (by, for example, protecting the right of students in Des Moines to wear armbands protesting the Vietnam War). As “the expression of an idea through an activity,” symbolic speech depends heavily on the context within which it occurs. Unlike pure speech, symbolic speech is more susceptible to limitation, as articulated by the Warren court’s 1968 ruling in United States v. O’Brien. The outcome of that case, the O’Brien test, establishes a four-pronged series of qualifications for determining when symbolic speech can be limited: (1) Any limitation must be within the state’s constitutional powers; (2) the limitation must be driven by a compelling governmental interest; (3) that countervailing interest must be unrelated to the content of the speech, touching solely on the “non-communicative aspect” of the act in question; and (4) any limitation must be narrowly tailored and prohibit no more speech than absolutely necessary. In practical terms, this litmus test suggests that you can carry a gun as symbolic speech, particularly in the context of a pro-Second Amendment demonstration. The state’s clear interest in maintaining public order can be narrowly satisfied by demanding that protesters either carry guns that are unloaded — at least with an open chamber — or which otherwise have the barrel or action blocked. Thus far, open carry protesters have largely followed this rule, notably by sticking tiny American flags into their guns. “If the SWAT team comes down and starts surrounding us with tactical gear, it only takes a minute to pull them out,” the organizer of one such event told reporters. “But that’s not going to happen.”

#### Gun bans on campus solve suicide and accidental deaths.

DeFillipis 14 Evan, graduated number one in his class at the University of Oklahoma with degrees in Economics, Political Science, and Psychology. He is a Harry S. Truman Scholar, a David L. Boren Critical Languages Scholar, and currently works as a research analyst at Quest Opportunity Fund. His work on gun violence has been featured in Washington Post, Atlantic, Slate, VICE, Huffington Post, Vox, Media Matters, Boston Review, and many others. “Campus Gun Control Works- Why Guns and Schools Do Not Mix” Jun 07, 2014. https://www.armedwithreason.com/campus-gun-control-works-why-guns-and-schools-do-not-mix/ SA-IB

Accidents Happen Even without the presence of alcohol, accidents happen much more often than gun advocates would like to admit. And when accidents happen with guns, they are often deadly. Individuals in households with firearms, for example, are four times more likely to die of accidental death than those in households without firearms. The NRA supports bills that permit guns to be carried in vehicles on school grounds, arguing that firearm owners should not be punished for accidentally leaving a gun in their car. Curiously, there seems to be little concern for what happens if the same careless owner accidentally forgets to lock his car, accidentally fails to put the safety on, or accidently pulls the trigger, ad infinitum. It seems clear that there are many more ways to accidentally go wrong with a gun than there are ways to go right, and this is especially true in a densely populated, anxiety-ridden, alcohol-saturated, hormone-fueled school environment.Guns and Suicide While suicide is the second leading cause of death among college students, the rate of about 6.5 to 7.5 per 100,000 is roughly half that of a matched non-student population. The difference in suicide rates between student and non-student populations is explained almost completely by the reduced access to firearms on college campuses. Consider that suicides committed with firearms represent only five percent of suicide attempts but more than half of suicide fatalities. About 1,100 college students commit suicide each year, and another 24,000 attempt to do so. Given that suicide attempts with a firearm are successful 90 percent of the time, each one of these more than 25,000 attempts would almost certainly result in death if carried out with a firearm. The best studies to date show that the majority of suicides are impulsive, with little deliberation prior to the act. We also know that youths between the ages of eighteen and twenty-five experience the highest rates of mental illness in the general population. These factors, combined with high rates of alcohol and drug abuse, provide a compelling reason to believe that the nation’s suicide rate will increase if firearms are allowed on college campuses.

#### Disad turns state legitimacy –

#### 1. the mere existence of privately owned guns is a means of shutting down democratic deliberation.

Debrabander 12 FIRMIN [associate professor of philosophy at the Maryland Institute College of Art, Baltimore and the author of “Spinoza and the Stoics”], “The Freedom of an Armed Society”, NY Times, 16 Dec 2012, BE

**Individual gun ownership — and gun violence — has long been a distinctive feature of American society**, setting us apart from the other industrialized democracies of the world. Recent legislative developments, however, are progressively bringing guns out of the private domain, with the ultimate aim of enshrining them in public life. Indeed, the N.R.A. strives for a day when the open carry of powerful weapons might be normal, a fixture even, of any visit to the coffee shop or grocery store — or classroom.¶ As N.R.A. president Wayne LaPierre expressed in a recent statement on the organization’s Web site, more guns equal more safety, by their account. A favorite gun rights saying is “an armed society is a polite society.” If we allow ever more people to be armed, at any time, in any place, this will provide a powerful deterrent to potential criminals. Or if more citizens were armed — like principals and teachers in the classroom, for example — they could halt senseless shootings ahead of time, or at least early on, and save society a lot of heartache and bloodshed.¶ **As ever more people are armed in public, however — even brandishing weapons on the street — this is no longer recognizable as a civil society. Freedom is vanished at that point**.¶ And yet, gun rights advocates famously maintain that individual gun ownership, even of high caliber weapons, is the defining mark of our freedom as such, and the ultimate guarantee of our enduring liberty. Deeper reflection on their argument exposes basic fallacies.¶ In her book “The Human Condition,” the philosopher Hannah Arendt states that “violence is mute.” According to Arendt, speech dominates and distinguishes the polis, the highest form of human association, which is devoted to the freedom and equality of its component members. **Violence — and the threat of it — is a pre-political manner of communication and control, characteristic of undemocratic organizations and hierarchical relationships. For the ancient Athenians who practiced an incipient, albeit limited form of democracy** (one that we surely aim to surpass), **violence was characteristic of the master-slave relationship, not that of free citizens**.¶ This becomes clear if only you pry a little more deeply into the N.R.A.’s logic behind an armed society. **An armed society is polite, by their thinking, precisely because guns would compel everyone to tamp down eccentric behavior**, and refrain from actions that might seem threatening. **The suggestion is that guns liberally interspersed throughout society would cause us all to walk gingerly — not make any sudden, unexpected moves — and watch what we say, how we act, whom we might offend**.¶ As our Constitution provides, however, liberty entails precisely the freedom to be reckless, within limits, also the freedom to insult and offend as the case may be. The Supreme Court has repeatedly upheld our right to experiment in offensive language and ideas, and in some cases, offensive action and speech. Such experimentation is inherent to our freedom as such. But **guns** by their nature do not mix with this experiment — they don’t mix with taking offense. They **are combustible ingredients in assembly and speech**.¶ I often think of the armed protestor who showed up to one of the famously raucous town hall hearings on Obamacare in the summer of 2009. The media was very worked up over this man, who bore a sign that invoked a famous quote of Thomas Jefferson, accusing the president of tyranny. But no one engaged him at the protest; no one dared approach him even, for discussion or debate — though this was a town hall meeting, intended for just such purposes. **Such is the effect of guns on speech — and assembly. Like it or not, they transform the bearer, and end the conversation in some fundamental way. They announce that the conversation is not completely unbounded, unfettered and free; there is or can be a limit to negotiation and debate — definitively**.¶ The very power and possibility of free speech and assembly rests on their non-violence. **The power of the Occupy Wall Street movement, as well as the Arab Spring protests, stemmed precisely from their non-violent nature.** This power was made evident by the ferocity of government response to the Occupy movement. Occupy protestors across the country were increasingly confronted by police in military style garb and affect.¶ **Imagine what this would have looked like had the protestors been armed**: in the face of the New York Police Department assault on Zuccotti Park, there might have been armed insurrection in the streets. **The non-violent nature of protest in this country ensures that it can occur**.

Prefer this argument about turning case – Raffi read an AFF last year with the same FW as this one which had this card as offense – Raffi’s own argumentation proves the disad really does turn case

#### 2. their wrong actor argument presumes that colleges act alone, but many of the status quo gun bans are mandated by state or federal levels

#### 3. there’s no supreme court ruling on guns on campus, so err my way

#### 4. states have obligations to citizens to create safe environments, a gun ban is part of that obligation

#### 5. federal decisions have left gun decisions up to individual college, which means its uniquely legitimate for the gun bans to exist

## Case

### Framework v1

#### CONTRACT THEORY IS ROOTED IN RACISM –

omitted

#### The standard is mitigating oppression –

omitted

### Contention

#### omittted